

The opinion in support of the decision being entered today was *not*
written for publication is *not* binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

SEP 13 2002
PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK LYTE

Appeal No. 2001-1748
Application 09/241,825

ORDER DENYING ORAL HEARING

On September 5, 2000, Appellant filed an Appeal Brief (Paper No. 13) which contained on page 1 thereof the following statement:

This Brief is being filed in triplicate along with a check for \$155.00 to cover the fee the appeal. Appellants request the opportunity for a personal appearance before the Board of Appeals to argue the issues of this appeal. The fee for the personal appearance will be timely paid upon receipt of the Examiner's Answer.

On April 23, 2002, Appellant filed a Supplemental Appeal Brief (Paper No. 16) which had on page one the further statement of:

Appellants request the opportunity for a personal appearance before the Board of Appeals to argue the issues of this appeal. The fee for the personal appearance has been timely paid after the receipt of the Examiner's Answer.

In a telephone conversation held between counsel for the appellant, Mr. Mark A. Litman, and the undersigned on September 12, 2002, counsel was asked to present evidence regarding whether the oral hearing request had been perfected with a separate paper containing the oral hearing fee. In response, counsel stated that he had not, although he thought he had done so when he filed the Supplemental Appeal Brief. The request for an oral hearing is denied. 37 CFR § 1.194 sets forth the requirements for the request for an oral hearing and is reproduced below.

§ 1.194 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which the appellant considers such a hearing necessary or desirable for a proper presentation of his appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as appeals decided after oral hearing.

(b) If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months after the date of the examiner's answer. If the appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(d), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See § 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550© for extensions of time in a reexamination proceeding.

(c) If no request and fee for oral hearing have been timely filed by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing and has submitted the fee set forth in § 1.17(d), a day of hearing will be set, and due notice thereof given to appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty

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minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins. If the Board decides that a hearing is not necessary, the Board will so notify appellant.

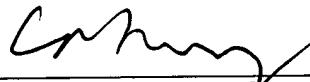
In the instant application, appellant had not perfected the request for an oral hearing by payment of the required fee, nor did the appellant submit in a separate paper an oral hearing request as required under 37 CFR § 1.194(b).

Also, there appears to be a difference between the correspondence address of record, and the address currently used by counsel. Clarification and/or a formal change of address is required.

Accordingly, it is

ORDERED that the application be decided based upon the written record before the Board of Patent Appeals and Interferences.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
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Program and Resource Administrator

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